



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill expands the Special Risk Class to include nurses in county correctional facilities.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background on the FRS

The Florida Retirement System (FRS) is the fourth largest public retirement system in the United States, covering 648,379 active employees, 237,730 retirees and their surviving beneficiaries, and 31,457 participants of the Deferred Retirement Option Program (DROP).<sup>1</sup> The active membership is divided into five membership classes: Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected Officers' Class, and Senior Management Service Class. Each class is separately funded based upon the costs attributable to the members of that class.

As stated in s. 121.0515(1), F.S., in creating the Special Risk Class of membership within the FRS, the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, criminal detention, and emergency medical care positions must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. The Legislature further found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their coworkers. In response, the Legislature established a special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation compared to other members with normal retirement after 30 years of service or age 62 and vested.

Special Risk Class membership differs from Regular Class membership in the following ways:

- A Special Risk Class member earns retirement credit at the rate of 3 percent of average final compensation (AFC) for each year of service, as opposed to the 1.6 percent -1.68 percent credit per year of service earned by a Regular Class member.
- A Special Risk Class member qualifies for normal retirement at an earlier age (age 55 versus age 62) or with fewer years of service (25 years versus 30 years) than a Regular Class member.
- A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65 percent minimum option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42 percent minimum option 1 benefit payment.<sup>2</sup> Option 1 benefit payment provides a continuing monthly benefit to the retiring member for his or her lifetime.

The benefit improvements gained by Special Risk Class members are funded by higher employer contributions. Currently, the Special Risk Class makes up nearly 11percent of the active FRS membership. For the 2005-06 plan year, the employer contribution rate for the Special Risk Class is 17.37 percent--slightly over 2.5 times higher than the 6.67 percent for the Regular Class. Under the

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<sup>1</sup> Department of Management Services 2006 Substantive Bill Analysis, HB 731, February 23, 2006, pg 3.

<sup>2</sup> *Id.* pg 4.

FRS Investment Plan, the amount contributed to an individual member account increases from 9.25 percent to 21.33 percent when the member moves from the Regular Class to the Special Risk Class.<sup>3</sup>

### Status of State Nurses

Currently, nurses employed by the state who operate under specific class codes and who spend at least 75 percent of his or her time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution qualify for membership in the Special Risk Class. Such nurses gained Special Risk status in 1999.

### County Nurses

There are approximately 28 counties that employ nurses at county correctional facilities with an estimated 300 Licensed Nurse Practitioners (L.P.N.'s). The remaining counties opt to follow one of two options: either contract out their nursing services, which roughly 27 counties do, or have no nursing services. Counties with no nursing services call Emergency Medical Technicians to the facility or have certified clerks on staff.

### Effect of the Bill

The bills expands the membership of the Special Risk Class on or after October 1, 2006, to a person employed as a nurse whose duties involve contact with inmates in a county correctional facility.

Section 121.0515(2)(f), F.S., provides the criteria for a nurse employed by the state to gain Special Risk Class status. The bill extends that umbrella to those nurses employed to a correctional facility at the county level.

The bill provides a declaration of important state interest.

#### C. SECTION DIRECTORY:

Section 1 creates s. 121.021(15)(f), F.S., to add nurses, whose duties involve contact with inmates in a county correctional facility, to the definition of a "special risk member."

Section 2 creates s. 121.0515(2)(i), F.S., to include nurses in the Special Risk Class whose duties involve contact with inmates in a county correctional facility.

Section 3 provides a declaration of important state interest.

Section 4 provides an effective date of October 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The FRS will experience increased revenue from FRS employers who pay an increase in the retirement contribution rate for their FRS employees who are affected by this bill by paying the rate for the Special Risk Class instead of the Regular Class Rate.<sup>4</sup>

##### 2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

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<sup>3</sup> *Id.*, pg 2.

<sup>4</sup> *Id.*, pg 1.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

FRS employers would pay an increased retirement contribution rate for their FRS employees who are affected by this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not have a direct economic impact on persons in the private sector.

D. FISCAL COMMENTS:

Membership in the Special Risk Class has grown by more than 25 percent in the last six years. There were 54,683 active Special Risk Class members as of June 1999. As of June 2005, there were 71,383 members filling Special Risk Class positions: 68,466 active members and 2,917 Deferred Retirement Option Program participants.<sup>5</sup>

This bill would add an unknown number of additional positions to the Special Risk Class. The fiscal impact to the FRS is primarily funded through the required employer contributions for members of the Special Risk Class. Any fiscal impact resulting from a change in class demographics or experience would be reflected in future valuations of the FRS.<sup>6</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

This bill may, however, require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Yet, the bill appears to satisfy the requirements of section 18 of article VII of the Florida Constitution<sup>7</sup> because it provides that the act fulfills an important state interest and the expenditures are required by a law which appears to apply to all persons similarly situated, including the state and local governments.

2. Other:

Article X, s. 14, Florida Constitution

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<sup>5</sup> *Id.*, pg 2.

<sup>6</sup> *Id.*, pg 7.

<sup>7</sup> Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Since 1976 the Florida Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State requirement systems benefit changes.—A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding to the increase in benefits on a sound actuarial basis.

The bill appears to comply with the requirements of s. 14, Art. X of the State Constitution.

**B. RULE-MAKING AUTHORITY:**

This bill does not appear to create, modify, or eliminate rule-making authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Definition of “county correctional facility”

There is no definition of “county correctional facility” in the Florida Statutes. However, s. 951.23(1)(a), F.S., defines a “county detention facility” as: “a county jail, a county stockade, a county work camp, a county residential probation center<sup>8</sup>, and any other place except a municipal detention facility<sup>9</sup> used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.” The sponsor may wish to substitute “county correctional facility” with “county detention facility.”

Municipal Jails

The Department of Management Services’ bill analysis raised the concern that this bill does not include nurses whose duties involve contact with inmates in municipal detention facilities. It appears that Ft. Lauderdale has the last municipal jail, and only fingerprinting and photographing are conducted at this facility. The rest of the municipal detention facilities were closed or merged into county facilities when cities lost their municipal court powers in 1971.<sup>10</sup>

Definition of “nurses”

The bill does not define “nurses,” nor does it establish any professional level that must be attained to qualify for the improved benefit. In contrast, under current law,<sup>11</sup> nursing positions eligible for special risk membership at the state level are specified by title and class codes, have primary duty descriptions, and reference that their duties require inmate contact more than 75 percent of the time. The sponsor may wish to amend the bill to provide a definition of “nurses.”

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<sup>8</sup> “County residential probation center” is defined in s. 951.23(1)(b), F.S., as: “a county-operated facility housing offenders serving misdemeanor sentences or first-time felony sentences.”

<sup>9</sup> “Municipal detention facility” is defined in s. 951.23(1)(d), F.S., as: “a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.”

<sup>10</sup> Fla Const. Article V, s. 20(d)(4), F.S., “Municipal courts shall continue with their same jurisdiction until amended or terminated in a manner prescribed by special or general law or ordinances, or until January 3, 1977, whichever occurs first. On that date all municipal courts not previously abolished shall cease to exist.”

<sup>11</sup> See s. 121.0515(2)(f), F.S.

### Level of Contact

The bill states the nurses' duties must "involve contact with inmates in a county correctional facility." This language may be interpreted to mean any kind of contact, however non-medical, insignificant, or temporary in nature it might be. The sponsor may wish to amend the bill to provide more detail to achieve professional equity with covered nurses in state facilities by including the job duties that are primary and compromise more than a certain percentage of their time.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Not applicable.